

This is a claim for a March 31, 1998 accident and alleged injuries to the neck, low back, both arms, and both shoulders. The Judge denied claimant's request for permanent partial disability benefits after determining that claimant failed to prove that she sustained a permanent impairment as a result of the March 1998 accident.

Claimant contends Judge Barnes erred. Claimant argues that her symptoms have remained consistent following the March 1998 accident and that those symptoms are consistent with the accident. Further, claimant argues that the Judge ignored the lay testimony that supported Dr. Pedro Murati's opinion that claimant sustained permanent injury. Claimant contends that she has a 13 percent whole body functional impairment and a 79 percent work disability.

Conversely, respondent and its insurance carrier contend the Award is well supported by the record and should be affirmed. They point out that Dr. Murati's opinion of permanent functional impairment is controverted by both Dr. Bernard Poole and Dr. Philip Mills.

The only issue before the Appeals Board on this review is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the arguments, the Appeals Board finds the Award should be affirmed.

The Appeals Board agrees with, and adopts as its own, the findings and conclusions set forth in the Award. The Appeals Board affirms the Judge's conclusion that claimant has failed to prove that she sustained permanent injury because of the March 1998 work-related accident.

The Appeals Board is persuaded by the testimonies of both Dr. Poole and Dr. Mills. Dr. Poole testified that claimant could voluntarily correct the abnormal posture in which she was holding her neck and shoulders and that he was unable to find any pathology in claimant's neck and arms. Dr. Mills, who examined claimant at the Judge's request and who is an unbiased witness, testified that claimant's pain behaviors were nonphysiologic and that he could not find any objective evidence of a permanent injury. The Board is mindful that Dr. Murati testified on behalf of claimant and that he testified claimant had sustained permanent injury. But, in this instance, the greater weight of the evidence is that claimant did not sustain either a permanent injury or a permanent functional impairment as a result of the March 1998 accident.

AWARD

WHEREFORE, the Appeals Board affirms the January 28, 2000 Award denying additional compensation entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of June 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Wichita, KS
Eric K. Kuhn, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director